

**Before the
TRANSPORTATION SECURITY ADMINISTRATION
Washington, DC.**

In the Matter of

Threat Assessments Regarding)	
Alien Holders of, and Applicants)	
for, FAA Certificates)	
)	

Docket No. TSA-2002-13733

COMMENTS of Nickolaus E. Leggett

The security screening for alien holders of FAA licensees and applicants that has been set up violates several important and basic aspects of American law and civic culture. My comments address these problems and suggest constructive alternatives.

I am a licensed pilot (FAA Certificate # 2190005) with the following ratings:
Commercial Pilot – Lighter-than-air free balloon, Private Pilot – Single engine airplane, Private Pilot – Glider aero tow. My flight experience includes the Cessna 172 airplane, Schweitzer 2-33 glider, and Raven S-50 hot air balloon (56,000 cubic feet capacity). I also have a Master of Arts degree in Political Science from the Johns Hopkins University (May 1970).

Problems with the Security Screening of Pilots

Aliens have fewer rights than citizens have. Despite this, the new security screening process violates major values of American political culture. One of these central values is due process of law. American citizenship and civics classes throughout the Nation define due process as including the following aspects:

- Regulations and laws must specifically define violations so that people can follow the law.

- All laws and regulations must be published so that the public can access them.
- The accused violator (and their legal counsel) must have access to all the evidence against him or her.
- The accused must have the right to confront his or her accusers in a public proceeding governed by recognized published procedural rules of fairness and evidence.
- Decisions must be made on a factual basis, not merely on suspicions.
- The accused must have the right to appeal the decision to higher authority including an appeal outside of the TSA including an appeal to the Courts.

This concept of due process is basic to the legitimacy of American government. In the case of alien pilots, many of these pilots are becoming citizens and they are being taught about the importance of due process in the American political system.

Consequences of Ignoring Due Process

The current rules violate these basic principles of due process that govern the social contract between Americans and their government and the basic operation of the American governmental system.

Continuing this governmental violation of basic due process raises unpleasant images of a possible drift toward a dictatorship. Indeed, most political science courses objectively identify dictatorships by their lack of due process. Historical examples such as National Socialist Germany, the Soviet Union, and the Peoples' Republic of China are described with their secret trials, secret evidence, and actions based on suspicions.

We don't want this sort of image associated with the operations of the United States government because it results in a decline in legitimacy of the government itself.

Correcting the Situation

This negative situation can be corrected by returning to due process by following the suggestions in my comments to the FAA in their docket FAA-2003-14293 (Ineligibility for an Airman Certificate Based on Security Grounds). The text of my comments to the FAA is presented in Appendix A of this document.

Personal Response

As both a citizen and a political scientist, I am quite surprised to see this type of regulation set up in the United States of America. I recommend that the regulations be modified so that they are more consistent with the spirit and letter of our culture, Constitution, and system of law. Because of the importance of this subject, I have brought it to the attention of my Senators and Congressman.

Respectfully submitted,

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February 10, 2003

Appendix A – Comments to the FAA

Before the

FEDERAL AVIATION ADMINISTRATION Washington, DC.

In the Matter of

**Ineligibility for an Airman
Certificate Based on
Security Grounds**

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Docket No. FAA-2003-14293

COMMENTS of Nikolaus E. Leggett

The security screening for FAA licensees and applicants that has been set up violates several important and basic aspects of American law. My comments address these problems and suggest constructive alternatives.

I am a licensed pilot (FAA Certificate # 2190005) with the following ratings:
Commercial Pilot – Lighter-than-air free balloon, Private Pilot – Single engine airplane,
Private Pilot – Glider aero tow. My flight experience includes the Cessna 172 airplane,
Schweitzer 2-33 glider, and Raven S-50 hot air balloon (56,000 cubic feet capacity).

Problems with the Security Screening of Pilots

The regulations have the following significant problems:

1. There is no published codification of the specific attributes that would cause a pilot to be identified as a threat to aviation security.
2. Secret data can be used for the determination that a pilot is a threat to aviation security.
3. A pilot who is merely suspected of being a threat can be denied his or her license.

4. The time periods for the pilot's responses are too short for an important legal process.
5. In many cases, the loss of a license results in the loss of income. Such a loss must be governed by the due process of law.

All of these aspects have significant legal problems. Some of these aspects may be unconstitutional since the Constitution requires the use of written laws and regulations and open legal processes with public disclosure of evidence.

Suggested Modifications to the Rules

The following changes should be made to the rules to make them more consistent with the letter and spirit of the American Constitution:

1. The specific attributes that identify a pilot as a threat to security should be published in the Code of Federal Regulations (CFR). These attributes should be clearly published as they are in the case of firearm ownership.
2. The use of secret data to block licenses should be banned. There is no way that a pilot can successfully respond to evidence that he cannot examine.
3. Licenses should only be blocked for people who are known to be a threat.
Blocking a license for someone who is suspected of being a threat is not legitimate.
4. Pilots and others should be allowed at least 90 days to respond to the actions. The current response times are too short for this important legal process.
5. Both the FAA and the Transportation Security Administration (TSA) should be active participants in conducting the evaluations of the pilots and appeals of the evaluations. The FAA can thus add its expertise to the process.

6. Appeals should be public proceedings with all evidence made available to the public.
7. There should be a defined procedure for conducting judicial reviews of decisions made by the FAA and TSA in blocking aviation licenses.

Impact on the FAA

The use of a license removal procedure that has serious constitutional flaws can have a negative impact on the prestige and the legitimacy of the FAA. At the current time, the FAA has high prestige and legitimacy. This could be impacted by intense legal cases that will arise when innocent pilots are caught up in this secretive and un-American process.

Respectfully submitted,

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January 27, 2003